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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

5 BNP PARIBAS,

6 Defendant.

Plea

7 -----x  
8 New York, N.Y.  
9 July 9, 2014  
4:52 p.m.

10 Before:

11 HON. LORNA G. SCHOFIELD,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 BY: ANDREW D. GOLDSTEIN, ESQ.

MARTIN BELL, ESQ.

18 MICAH W.J. SMITH, ESQ.

Assistant United States Attorneys

19 U.S. DEPARTMENT OF JUSTICE

Asset Forfeiture and Money Laundering Section

20 BY: JENNIFER E. AMBUEHL, ESQ.

21 SULLIVAN & CROMWELL LLP

Attorneys for Defendant

22 BY: KAREN PATTON SEYMOUR, ESQ.

23 GEORGES DIRANI, Corporate Representative, BNP Paribas

E791bnpp

(In open court; case called)

THE DEPUTY CLERK: Counsel, please state your appearances for the record.

MR. GOLDSTEIN: Good afternoon, Judge Schofield. Andrew Goldstein for the government, and with me at counsel table is Assistant United States Attorney Martin Bell, Jennifer Ambuehl, who is a trial attorney for the Department of Justice, and Micah Smith from our office.

THE COURT: Good afternoon.

MS. SEYMOUR: And good afternoon, your Honor. It's Karen Seymour from Sullivan & Cromwell for the defendant BNP Paribas.

THE COURT: Good afternoon. And with you is?

MS. SEYMOUR: Is Georges Dirani, who's the general counsel from the client, your Honor.

THE COURT: Good afternoon, Mr. Dirani.

MR. DIRANI: Good afternoon.

THE COURT: You may be seated.

So I've been advised that BNP Paribas, which I'll refer to as the bank, wishes to waive indictment and plead guilty to Count One of an information. Is that right, Ms. Seymour?

MS. SEYMOUR: That's right, your Honor.

THE COURT: So Mr. Dirani, are you appearing on behalf of the bank to plead?

E791bnpp

1 MR. DIRANI: I am.

2 THE COURT: Do you read and understand English?

3 MR. DIRANI: Absolutely.

4 THE COURT: Okay. I'm going to ask you some questions  
5 to ascertain that you are both competent and authorized to  
6 enter a plea, so just answer the questions as completely and  
7 honestly as you can.

8 Are you now or have you recently been under the care  
9 or treatment of a doctor or a psychiatrist?

10 MR. DIRANI: No, your Honor.

11 THE COURT: In the past 24 hours have you taken any  
12 drugs, medicine, pills, or drunk any alcohol?

13 MR. DIRANI: No, your Honor.

14 THE COURT: Is your mind clear today?

15 MR. DIRANI: Yes.

16 THE COURT: And do either counsel have any doubt as to  
17 Mr. Dirani's competence to act on behalf of the bank today?

18 MS. SEYMOUR: No, your Honor.

19 MR. GOLDSTEIN: No, your Honor.

20 THE COURT: Okay. So Mr. Dirani, are you authorized  
21 by the board of directors of the bank to enter a plea of guilty  
22 on behalf of the bank?

23 MR. DIRANI: Yes, your Honor.

24 THE COURT: I'd like to mark as Court Exhibit 1 the  
25 limited certificate of corporate resolution that had been

E791bnpp

1 appended to the proposed plea agreement which reflects your  
2 authority.

3 My next question is: Is the board of directors  
4 authorized to give you authority to enter into a plea of  
5 guilty?

6 MR. DIRANI: Yes, your Honor.

7 THE COURT: And is that power conferred by both the  
8 French Commercial Code and the bank's Articles of Association?

9 MR. DIRANI: Yes, your Honor.

10 THE COURT: To that end, I would like to mark as Court  
11 Exhibit 2 Articles L225 through 35 of the French Commercial  
12 Code; as Court Exhibit 3, Article 12 of the bank's Articles of  
13 Association, both in English and in French; as Court Exhibit 4,  
14 Article L225-56 of the French Commercial Code.

15 So on the basis of your answers and the documents --  
16 and thank you very much, counsel, for getting them to me on  
17 short notice -- I'm satisfied that Mr. Dirani is authorized to  
18 enter a plea of guilty on behalf of the bank.

19 Is the bank financially able, Mr. Dirani, to pay the  
20 substantial fine that could be imposed by the court for the  
21 charge involved in the guilty plea as well as the forfeiture?

22 MR. DIRANI: Yes, it is, your Honor.

23 THE COURT: So I will mark as Court Exhibit 5 a press  
24 release that I have been given by counsel for the defense dated  
25 June 30, 2014, from the French regulatory authorities in

E791bnpp

1 English and in French, commenting both on the liquidity and the  
2 solvency of the bank and redirecting its ability to pay, so  
3 before we proceed with the waiver of indictment and the plea, I  
4 will ask you more questions, and it's important that you answer  
5 honestly and completely. The purpose of the questions is to  
6 ensure that you understand the rights of the bank, that the  
7 bank is waiving indictment and pleading guilty voluntarily, and  
8 that the consequences of doing so are clear. It's also  
9 important that you understand every question before you answer  
10 it, so if you don't understand, please let me know and either I  
11 or Ms. Seymour will explain.

12 Mr. Pecorino, would you administer the oath to  
13 Mr. Dirani, please.

14 THE DEPUTY CLERK: Please raise your right hand.

15 (Mr. Dirani was duly sworn)

16 THE DEPUTY CLERK: Thank you.

17 THE COURT: Now, Mr. Dirani, do you understand that  
18 you're now under oath and that if you answer my questions  
19 falsely, your untrue answers may be later used against you in a  
20 separate prosecution for perjury or making false statements?

21 MR. DIRANI: Yes.

22 THE COURT: Okay. So Ms. Seymour, are you or is  
23 Sullivan & Cromwell counsel for the bank?

24 MS. SEYMOUR: Yes, your Honor.

25 THE COURT: Both or --

E791bnpp

1 MS. SEYMOUR: Both.

2 THE COURT: Okay. And Ms. Seymour, has the bank had a  
3 full opportunity to discuss the case with you and discuss the  
4 consequences of waiving indictment and pleading guilty?

5 MS. SEYMOUR: Yes, it has.

6 THE COURT: Mr. Dirani, has the bank discussed with  
7 its attorneys the charges against it, including any defenses it  
8 might have?

9 MR. DIRANI: Yes, your Honor.

10 THE COURT: And are you and the bank satisfied with  
11 the bank's attorneys and their representation of the bank?

12 MR. DIRANI: Yes, your Honor.

13 THE COURT: Okay. You may be seated.

14 So now I want to explain the rights that the bank will  
15 be giving up if it waives indictment. And then after I explain  
16 the rights, I will ask you a few questions.

17 First, the bank has a constitutional right to be  
18 charged by an indictment of a grand jury, but it can waive that  
19 right and consent to being charged by information of the  
20 government.

21 Second, instead of an indictment, this charge has been  
22 brought by the government, by a prosecutor, by the filing of an  
23 information. Unless the bank waives indictment, it may not be  
24 charged with a felony unless a grand jury finds that there was  
25 probable cause to believe that a crime has been committed and

E791bnpp

1 that the bank committed it. If you do not waive indictment on  
2 behalf of the bank, the government may present the case to the  
3 grand jury and ask it to indict the bank. The grand jury  
4 consists of at least 16 and not more than 23 people, and at  
5 least 12 grand jurors must find that there is probable cause to  
6 believe that the bank committed the crime with which it's  
7 charged before it may be indicted. The grand jury may or may  
8 not indict the bank. If the bank waives indictment by the  
9 grand jury, the case will proceed against it on the  
10 prosecutor's information just as though the bank had been  
11 indicted.

12 Mr. Dirani, has the bank and have you discussed  
13 waiving the bank's right to indictment by the grand jury with  
14 Ms. Seymour?

15 MR. DIRANI: Yes, your Honor.

16 THE COURT: And do you and the bank understand the  
17 right to indictment by a grand jury?

18 MR. DIRANI: Yes.

19 THE COURT: Have any threats or promises been made to  
20 induce the bank to waive indictment?

21 MR. DIRANI: No, your Honor.

22 THE COURT: Does the bank wish to waive indictment by  
23 a grand jury?

24 MR. DIRANI: Yes, your Honor.

25 THE COURT: So questions both to the government and to

E791bnpp

1 Ms. Seymour: Is there any reason that the bank should not be  
2 permitted to waive indictment?

3 MR. GOLDSTEIN: No, your Honor.

4 MS. SEYMOUR: No, your Honor.

5 THE COURT: And are you satisfied that the waiver is  
6 knowing, voluntary, and intelligent?

7 MR. GOLDSTEIN: We are, your Honor.

8 MS. SEYMOUR: Yes, your Honor.

9 THE COURT: So I will mark as Court Exhibit 6 the  
10 waiver of indictment, but I would first like to have Mr. Dirani  
11 sign it. So Mr. Pecorino, if you could get the signatures,  
12 please.

13 (Pause)

14 THE COURT: The court finds that the bank and its  
15 representative are fully aware of the bank's right to require  
16 the government to proceed by way of an indictment. The court  
17 further finds that the waiver of indictment is freely,  
18 intelligently, and voluntarily made. Therefore, the waiver is  
19 accepted and so ordered.

20 So, Mr. Dirani, now that the bank has waived  
21 indictment, I would like to discuss the guilty plea with you.

22 If the bank pleads guilty, it is giving up certain  
23 rights, and I will explain those rights that the bank will be  
24 giving up, and make sure that you understand them and that the  
25 bank is voluntarily and freely waiving them.

E791bnpp

1           So if the bank pleaded not guilty, it would be  
2           entitled to a speedy and public trial before a jury. If there  
3           were a trial, the bank would be presumed innocent and the  
4           government would have to prove the defendant's guilt by  
5           competent evidence beyond a reasonable doubt. The bank would  
6           not have to prove that it was innocent if it went to trial.

7           If there were a jury trial, the bank could not be  
8           convicted unless a jury of 12 people all agreed that the bank  
9           was guilty beyond a reasonable doubt. The bank would have the  
10          right to be represented by an attorney throughout all  
11          proceedings, including trial, if there is one.

12          If there were a trial, the bank would have the right  
13          to see and hear all the witnesses against it, and the bank's  
14          attorney could cross-examine them. The bank would have the  
15          right to have its attorney object to the government's evidence  
16          and offer evidence on the bank's behalf if it desired, and it  
17          would have the right to have subpoenas issued or other process  
18          used to compel witnesses to testify in its defense.

19          The bank has the right to plead not guilty.

20          Do you understand all the rights as I have just  
21          described them?

22          MR. DIRANI: Yes, your Honor.

23          THE COURT: Okay. If you do plead guilty on behalf of  
24          the bank and I accept that plea, you will be waiving the bank's  
25          right to trial and all of the related rights that I've just

E791bnpp

1 described. If you plead guilty on behalf of the bank, there  
2 will be no trial and I will enter a judgment of guilty and  
3 sentence the bank on another day. Do you understand that?

4 MR. DIRANI: Yes, your Honor.

5 THE COURT: I also want you to understand the  
6 consequences to you personally. I will ask you questions about  
7 the offense, and if you knowingly give untruthful or misleading  
8 answers to those questions under oath on the record and in the  
9 presence of counsel, the answers may later be used against you  
10 in a separate prosecution for perjury or for making false  
11 statements. Do you understand that?

12 MR. DIRANI: Yes, your Honor.

13 THE COURT: Understanding the rights of the bank that  
14 you will be giving up if you plead guilty on its behalf, and  
15 your own potential liability for giving untruthful answers, do  
16 you still wish to proceed?

17 MR. DIRANI: Yes, your Honor.

18 THE COURT: Okay. I have an Advice of Rights form  
19 that I'd like Mr. Pecorino to bring to you and have you sign,  
20 and I will mark it as Court Exhibit 7.

21 (Pause)

22 THE COURT: So, Mr. Dirani, now I'll review with you  
23 the charges and the possible penalties. Have you received and  
24 read the information which contains the charge against the  
25 bank?

E791bnpp

1 MR. DIRANI: Yes, your Honor.

2 THE COURT: Do you understand that the bank is charged  
3 with conspiracy to commit an offense against the United States  
4 by conspiring to violate the International Emergency Economic  
5 Powers Act and the Trading with the Enemy Act, and regulations  
6 under each of those statutes?

7 MR. DIRANI: Yes, your Honor.

8 THE COURT: So let me ask the government: The  
9 elements of the offense charged in Count One have been provided  
10 to me in a writing. Have they also been provided to the bank?

11 MR. GOLDSTEIN: They have, your Honor.

12 THE COURT: Okay. Mr. Dirani, have you seen the  
13 written list of elements?

14 MR. DIRANI: Yes, your Honor.

15 THE COURT: Okay. I will have that marked as Court  
16 Exhibit 8.

17 Mr. Dirani, do you understand that if you, on behalf  
18 of the bank, did not plead guilty to Count One of the  
19 information, the government would have to prove each and every  
20 element of that charge beyond a reasonable doubt at trial?

21 MR. DIRANI: Yes, your Honor.

22 THE COURT: Do you understand that the maximum  
23 possible penalty for this crime is a maximum fine of the  
24 greatest of 500,000, twice the gross pecuniary gain derived  
25 from the offense, or twice the gross pecuniary loss to persons

E791bnpp

1 other than the bank resulting from the offense; also a maximum  
2 term of five years' probation; and a mandatory special  
3 assessment of \$400?

4 MR. DIRANI: Yes, your Honor.

5 THE COURT: If you plead guilty on behalf of the bank  
6 to the forfeiture allegation that is in the information, do you  
7 understand that I may also order the bank to forfeit the amount  
8 traceable to the bank's violation in Count One, which I  
9 understand is over \$8 billion US?

10 MR. DIRANI: Yes, your Honor.

11 THE COURT: I have reviewed the materials that the  
12 bank and the government have submitted to me in connection with  
13 the plea, including the plea agreement, including a stipulated  
14 fine amount and a stipulated forfeiture amount, the  
15 information, the written elements of the offense, the statement  
16 of facts, agreements with other regulatory and law enforcement  
17 authorities, a proposed preliminary order of forfeiture,  
18 memoranda that the bank and government submitted on Monday at  
19 my request. And I want to thank counsel. I'm very sorry it  
20 happened over a holiday weekend. Your submissions were very  
21 helpful, so thank you. And I've also reviewed the additional  
22 documents provided by the bank on July 8<sup>th</sup> evidencing the  
23 authority of the bank's board for the guilty plea.

24 In addition to these materials, in imposing sentence,  
25 I'm also required to consider the recommendations of the

E791bnpp

1 Sentencing Guidelines, which are a set of rules and  
2 recommendations for determining an appropriate sentence. But  
3 in the end, I'm required to impose a sentence that I believe  
4 best satisfies the purposes of the criminal law based on  
5 certain factors set forth in the law in 18 United States Code  
6 Section 3553(a). The plea agreement, including the guidelines  
7 stipulation agreement and the appropriate sentence, are not  
8 binding on me unless and until I accept the plea agreement. I  
9 may accept, reject, or defer that decision. If I accept the  
10 plea agreement, I will sentence the bank according to its terms  
11 on another day. If I accept that agreement, the bank will not  
12 be able to withdraw its plea. If I reject the plea agreement,  
13 the bank will be permitted to withdraw its plea, but my  
14 rejection is the only condition under which the bank would be  
15 able to do that. Do you understand that?

16 MR. DIRANI: Yes, your Honor.

17 THE COURT: Okay. So I have a copy of the plea  
18 agreement. I believe Mr. Pecorino also has the original plea  
19 agreement dated June 27, 2014, between the bank and the  
20 government. I will have it marked as Court Exhibit 9.

21 Mr. Dirani, did you sign the plea agreement on behalf  
22 of the bank?

23 MR. DIRANI: Yes, your Honor.

24 THE COURT: And is that pursuant to your delegation of  
25 authority from the board as reflected in the resolution which

E791bnpp

1 is Court Exhibit 1?

2 MR. DIRANI: Yes, your Honor.

3 THE COURT: Ms. Seymour, have you reviewed the  
4 agreement with the bank?

5 MS. SEYMOUR: Yes, your Honor.

6 THE COURT: And is the plea agreement, Mr. Dirani, the  
7 entire agreement between the bank and the US government?

8 MR. DIRANI: Yes, your Honor.

9 THE COURT: Did anyone threaten, coerce, or force the  
10 bank to enter into the plea agreement?

11 MR. DIRANI: No, your Honor.

12 THE COURT: Other than what is contained in the plea  
13 agreement and the agreements with other regulators and law  
14 enforcement authorities, has anyone promised or offered the  
15 bank any inducement for the bank to enter into the plea  
16 agreement and plead guilty?

17 MR. DIRANI: No, your Honor.

18 THE COURT: Has anyone promised that the court will  
19 approve the plea agreement?

20 MR. DIRANI: No, your Honor.

21 THE COURT: So in the agreement the bank and the  
22 government have stipulated to the appropriate calculation of  
23 the sentencing range under the guidelines, and the bank and the  
24 government have also stipulated to a fixed amount for fine and  
25 a forfeiture. Is that right, Mr. Dirani?

E791bnpp

1 MR. DIRANI: Yes, your Honor.

2 THE COURT: So as I read it, the stipulated fine  
3 amount is 140 million US dollars, representing twice the amount  
4 of pecuniary gain to the bank as a result of the offense. The  
5 stipulated probation term is five years. And there is also a  
6 stipulated forfeiture amount of \$8,833,600,000, representing  
7 the amount of proceeds traceable to the offense. Is that  
8 right, Mr. Dirani?

9 MR. DIRANI: Yes, your Honor.

10 THE COURT: Do you understand that these stipulations  
11 in the plea agreement are binding on the bank and the  
12 government but are not binding on me?

13 MR. DIRANI: Yes, your Honor.

14 THE COURT: Do you also understand that under certain  
15 circumstances both the bank and the government have the right  
16 to appeal any sentence I might impose subject to the terms of  
17 the plea agreement but that under that agreement, you're giving  
18 up the bank's right to appeal or otherwise challenge the bank's  
19 sentence so long as I sentence the bank in accordance with the  
20 agreement?

21 MR. DIRANI: Yes, your Honor.

22 THE COURT: The plea agreement states that the bank  
23 will immediately file an application for prohibited transaction  
24 exemption with the US Department of Labor, requesting that the  
25 bank be allowed to continue to be a qualified professional

E791bnpp

1     asset manager pursuant to Prohibited Transaction Exemption  
2     8414. And this is a question either for Mr. Dirani or  
3     Ms. Seymour: What is the qualification that the bank is  
4     seeking to continue?

5             MS. SEYMOUR: Your Honor, this is what's called a  
6     QPAM --

7             THE COURT: If you could just pull the mic up to the  
8     edge of the table, point it straight up, and then you can stand  
9     up straight and I can hear you and everyone else will as well.

10            MS. SEYMOUR: Sure. Thank you, your Honor.

11            It's called a QPAM exemption -- a Qualified  
12     Professional Asset Manager exemption -- and that will allow the  
13     bank and its affiliates to continue to act as an asset manager  
14     for funds, such as pension funds and things like that.  
15     Otherwise, if that exemption is not granted by the Department  
16     of Labor, at the time of conviction at sentencing, then those  
17     funds would not be able to continue to maintain their business  
18     with the bank.

19            THE COURT: Okay. Thank you. I understand.

20            So the plea agreement further provides that the  
21     government agrees to support any motion by the bank that  
22     sentencing be adjourned until the Department of Labor has  
23     issued a ruling on the request. And could you explain why that  
24     is. I think you may have just answered it by explaining the  
25     relationship between the conviction and the implications

E791bnpp

1 without the exception, but --

2 MS. SEYMOUR: Yes, your Honor. So it would not be  
3 possible for the bank to continue to maintain this business if  
4 we proceeded to sentencing forthwith without having this  
5 exemption granted. The Department of Labor typically takes,  
6 we're told, between four to six months to have an exemption  
7 granted. We had sought expedited relief so that it could be  
8 done more quickly, but we do not yet have an indication from  
9 the Department of Labor of how long that will take. So this  
10 was something that the parties negotiated as part of the plea  
11 agreement.

12 THE COURT: Okay. Thank you.

13 The plea agreement also states that if the Department  
14 of Labor acts adversely to the bank, the bank cannot withdraw  
15 its plea or be released from any of its obligations under the  
16 agreement. Do you understand that and agree to that on behalf  
17 of the bank, Mr. Dirani?

18 MR. DIRANI: Yes, your Honor.

19 THE COURT: Okay. So would the government please  
20 summarize what it would expect to prove if the case went to  
21 trial. And please include how it would prove criminal intent  
22 in this case by a corporate entity.

23 MR. GOLDSTEIN: Yes, your Honor.

24 THE COURT: And let me ask you to pull the mic all the  
25 way up to the edge of the table and point it straight up. The

E791bnpp

1 acoustics are not great. Thank you.

2 MR. GOLDSTEIN: Thank you, your Honor.

3 And I can also just say, with regard to the Department  
4 of Labor issue, that we've confirmed with the Department of  
5 Labor that the bank did on June 30<sup>th</sup> submit an application  
6 for that exemption, in accordance with the plea agreement.

7 THE COURT: Okay. Thank you.

8 MR. GOLDSTEIN: If the case were to proceed to trial,  
9 the government would establish beyond a reasonable doubt each  
10 element of the offense charged in the information. It would  
11 also be able to prove, above and beyond that, the facts that  
12 are set forth in the statement of facts that were attached to  
13 the plea agreement.

14 The government's evidence would include, among other  
15 things, internal bank e-mails and communications, wire transfer  
16 records, other financial transaction records, and testimony  
17 from multiple witnesses both in the United States and overseas.  
18 In summary, the evidence would establish that BNPP, or BNP  
19 Paribas, engaged in a long-running conspiracy to violate the US  
20 embargoes against Sudan, Iran, and Cuba, and that BNP Paribas  
21 played the pivotal role in that conspiracy. It was BNP  
22 Paribas's access to the US dollar markets and BNP Paribas's  
23 willingness to employ elaborate and sophisticated techniques to  
24 evade US sanctions on behalf of its clients that enabled the  
25 conspiracy to succeed.

E791bnpp

1           The evidence would also show -- and this is in regard  
2 to your question about intent -- that senior officials at the  
3 bank knew about the illicit transactions and allowed them to  
4 continue.

5           As set forth in the statement of facts, there are two  
6 objects to the charged conspiracy. The first object pertains  
7 to the violation of the IEEPA, the International Emergency  
8 Economic Powers Act, and that pertains to the sanctions against  
9 Sudan and Iran. And with regard to those transactions, and  
10 with regard to the willfulness of actors at the bank, the  
11 government would point the court in the statement of facts to  
12 paragraphs 32, 33, 37 through 39 for Sudan, and 46 and 48 for  
13 Iran.

14           And with regard to the second object of the  
15 conspiracy, which pertains to the objective of violating the  
16 Trading with the Enemy Act, which pertains to the sanctions  
17 against Cuba, the government would call the court's attention  
18 to paragraphs 56, 57, 58, 61, and 63 through 69 of the  
19 statement of facts. And what those paragraphs show, your  
20 Honor, is that for all aspects of this conspiracy, there were  
21 individuals at BNP Paribas who were senior compliance, legal  
22 and business managers at the bank who knowingly and wilfully  
23 engaged in the transactions at issue, and the government's  
24 evidence in support of that would consist of e-mails evidencing  
25 the knowledge and the willfulness of the participants of the

E791bnpp

1 conspiracy at the bank, the transactions themselves, legal  
2 opinions that the bank received that laid out for the bank the  
3 illegality of these transactions, and then discussions at the  
4 bank as reflected in both e-mails and memos from credit  
5 committees at the bank that came after those legal opinions  
6 were received, where the bank willingly chose to continue to  
7 engage in these transactions, in these unlawful transactions.

8 With regard to just the basic elements of the  
9 offenses, the transactions at issue that are set forth in the  
10 statement of facts, they all would have required a license to  
11 have been issued by the Department of Treasury's Office of  
12 Foreign Assets Control in order for them to be lawful, and none  
13 of the transactions that are laid out in the statement of facts  
14 did in fact receive a license. And that goes for all three  
15 areas of transactions for Sudan, Iran, and for Cuba.

16 The government's evidence in total would show, based  
17 on the transaction records and witness testimony, that on the  
18 whole, BNPP, BNP Paribas, knowingly and wilfully processed  
19 illicit US dollar transactions with the following dollar  
20 amounts: for Sudan, \$6.4 billion; for Iran, \$686.6 million; and  
21 for Cuba, \$1.747 billion.

22 And then lastly, your Honor, with regard to venue, the  
23 transactions at issue were processed largely, if not entirely,  
24 through either BNP Paribas's New York branch or through  
25 unaffiliated banks located in New York, New York, as the

E791bnpp

1 transactions were cleared through the United States.

2 If your Honor has any other questions, I'd be happy to  
3 answer them.

4 THE COURT: Okay. Thank you. That's a very useful  
5 summary, and I of course have the statement of facts for a more  
6 complete statement.

7 So Mr. Dirani, you heard what Mr. Goldstein said.  
8 There were a lot of statements, plus we have what's in the  
9 statement of facts. Are those statements accurate?

10 MR. DIRANI: Yes, your Honor.

11 THE COURT: So if you could stand now, I'd like you to  
12 tell me what the bank did that makes you believe that it is  
13 guilty of the crime to which it is pleading guilty.

14 MR. DIRANI: Yes, your Honor.

15 On behalf of BNP Paribas, I affirm that BNP Paribas is  
16 guilty of conspiring to commit an offense against the United  
17 States, in violation of Title 18 United States Code  
18 Section 371. From at least 2004 through 2012, BNP Paribas  
19 conspired to violate the International Emergency Economic  
20 Powers Act and the Trading with the Enemy Act.

21 BNP Paribas admits to all of the facts contained in  
22 the statement of facts that is attached as Exhibit B to the  
23 plea agreement, and BNP Paribas further admits to all of the  
24 allegations in the information. The facts and allegations set  
25 forth in the statement of facts and information are fully

E791bnpp

1 incorporated into this statement I am making here.

2 BNP Paribas further admits that:

3 From 2004 up through and including 2012, it entered  
4 into an unlawful agreement with banks and other entities  
5 located in or controlled by Sudan and Iran to violate US  
6 executive orders prohibiting the exportation, directly and  
7 indirectly, of services from the United States to Sudan and  
8 Iran. BNP Paribas knowingly and wilfully exported services  
9 from the United States to persons and entities located in and  
10 controlled by the government of Sudan and to persons and  
11 entities located in Iran, by, among other things, structuring,  
12 conducting, and concealing US dollar transactions using the US  
13 financial system on behalf of banks and other entities located  
14 in or controlled by Sudan and Iran.

15 The transactions engaged in by BNP Paribas as part of  
16 this conspiracy required a license from OFAC.

17 BNP Paribas engaged in these transactions without  
18 first obtaining a license from OFAC.

19 BNP Paribas knowingly and wilfully joined the  
20 conspiracy, and its actions to violate the Sudanese Sanction  
21 Regulations and the Iranian Transactions and Sanctions  
22 Regulations were done wilfully, with the intent to violate the  
23 law.

24 In furtherance of this conspiracy and to effect its  
25 illegal objects, BNP Paribas, in or about December 2006,

E791bnpp

1 through its subsidiary based in Geneva, Switzerland, caused an  
2 unaffiliated US financial institution located in New York to  
3 process approximately \$10 million transaction involving an  
4 entity in Sudan subject to US economic sanctions. BNP Paribas  
5 caused this transaction by concealing from the unaffiliated  
6 financial institution the involvement of the sanctioned entity.

7 Also, in furtherance of the conspiracy and to effect  
8 its illegal object, in or about November 2012, BNP Paribas  
9 processed an approximately \$6.5 million US dollars transaction  
10 on behalf of a corporation controlled by an Iranian entity  
11 through BNP Paribas' branch in New York.

12 From 2004 up through and including 2010, BNP Paribas  
13 entered into an unlawful agreement with banks and other  
14 entities located in or controlled by Cuba or Cuban nationals  
15 by, among other things, structuring, conducting, and concealing  
16 US dollars transactions using the US financial system on behalf  
17 of banks and other entities controlled by Cuba.

18 The transaction engaged in by BNP Paribas as part of  
19 this conspiracy required a license from OFAC.

20 BNP Paribas engaged in these transactions without  
21 first obtaining license from OFAC.

22 BNP Paribas knowingly and wilfully joined the  
23 conspiracy, and its actions to violate the Cuban Assets Control  
24 Regulations were done wilfully, with the intent to violate the  
25 law.

E791bnpp

1           In furtherance of the conspiracy and to effect its  
2     illegal object, on or about November 24, 2009, BNP Paribas  
3     processed an approximately \$213,027 US dollars transaction  
4     through BNP Paribas's branch in New York in connection with a  
5     US dollar denominated credit facility that provided financing  
6     to various entities in Cuba that were subject to US economic  
7     sanctions.

8           The above actions and conduct were committed by  
9     numerous BNP Paribas employees who, in committing the offense,  
10    intended to benefit BNP Paribas and were acting within the  
11    scope of their employment.

12           THE COURT: Okay. Thank you.

13           Mr. Dirani, were these knowing violations of the law?

14           MR. DIRANI: Yes, your Honor.

15           THE COURT: Did anyone threaten or coerce or force BNP  
16    Paribas or its employees and representatives to do these  
17    things?

18           MR. DIRANI: No, your Honor.

19           THE COURT: Mr. Goldstein, do you believe that there  
20    is a sufficient factual predicate for a guilty plea?

21           MR. GOLDSTEIN: I do, your Honor.

22           THE COURT: And Ms. Seymour, do you agree?

23           MS. SEYMOUR: Yes, your Honor.

24           THE COURT: Are there any additional questions either  
25    of you would like me to ask?

E791bnpp

1 MR. GOLDSTEIN: Not from the government, your Honor.

2 MS. SEYMOUR: No, your Honor.

3 THE COURT: Okay. Ms. Seymour, do you know of any  
4 valid defense that would prevail at trial or any reason why  
5 your client, the bank, should not be permitted to plead guilty?

6 MS. SEYMOUR: No, your Honor.

7 THE COURT: Okay. Mr. Dirani, I will take the bank's  
8 plea now. How do you, on behalf of the bank, plead to the  
9 charge in Count One of the information, guilty or not guilty?

10 MR. DIRANI: Guilty, your Honor.

11 THE COURT: Is the bank in fact guilty of that charge?

12 MR. DIRANI: Yes, your Honor.

13 THE COURT: Is the plea that you are giving now  
14 voluntary and freely given?

15 MR. DIRANI: Yes, your Honor.

16 THE COURT: Do you, on behalf of the bank, admit the  
17 forfeiture allegation that is contained in the information that  
18 the bank will forfeit proceeds traceable to the offense in the  
19 amount of 8,833,600,000 US dollars?

20 MR. DIRANI: Yes, your Honor.

21 THE COURT: Okay. Thank you. You may be seated.

22 On the basis of your responses to my questions and my  
23 observations of these proceedings, I am satisfied that the  
24 defendant, BNP Paribas, S.A., is waiving its rights knowingly  
25 and voluntarily, with an understanding of the consequences of

E791bnpp

1 this guilty plea, including the potential sentence that may be  
2 imposed. that the defendant is voluntarily pleading guilty,  
3 that the defendant by its representative, Mr. Dirani, has  
4 admitted that it is guilty as charged in Count One of the  
5 information, and that the plea is knowing and voluntary and is  
6 supported by an independent factual basis as to each and every  
7 element of the crime charged. I also find that the bank has  
8 agreed to forfeit assets knowingly and voluntarily and,  
9 accordingly, I accept the defendant's guilty plea and adjudge  
10 the defendant guilty of the charge in Count One of the  
11 information.

12 Now, Mr. Dirani, I understand from the plea agreement  
13 that you wish to waive the bank's right to the preparation of a  
14 presentence report. The report is usually prepared by the  
15 probation department after interviewing the defendant and its  
16 representatives and obtaining a summary of the case from the  
17 government and statements of relevant information from third  
18 parties. Typically I don't have all the information that I do  
19 here and so I usually rely very heavily on the presentence  
20 report at the sentencing, but in a case like this, I would rely  
21 on it in deciding on the plea agreement. Knowing all that, do  
22 you still wish to waive the bank's right to the preparation of  
23 a presentence report?

24 MR. DIRANI: Yes, your Honor.

25 THE COURT: I accept your waiver in light of the

E791bnpp

1 substantial information that you and your counsel and the  
2 government have already submitted to me.

3 Now in considering the plea agreement, I have a number  
4 of questions, so let me ask them.

5 My first question is -- and I'll let either the  
6 government or Ms. Seymour answer, as is appropriate -- the  
7 total forfeiture amount is about \$8.8 billion -- 6.4 billion  
8 with respect to Sudanese entities, and about 700 million with  
9 respect to Iranian entities, and 1.7 billion with respect to  
10 Cuban entities, and these are all stipulated numbers in the  
11 statement of facts. My question is: Where do the numbers come  
12 from and how am I to rely on these numbers? How do we know  
13 that they shouldn't be larger numbers or smaller numbers?

14 MR. GOLDSTEIN: I can address that in the first  
15 instance, your Honor.

16 THE COURT: Okay.

17 MR. GOLDSTEIN: During the course of the government's  
18 investigation and the bank's own internal investigation, the  
19 bank retained or the bank's counsel retained consulting firms  
20 to do a comprehensive transaction analysis where they reviewed  
21 thousands upon thousands of transactions engaged in by the bank  
22 during the course of the review period and provided to the  
23 government the results of that analysis. And the government  
24 also interviewed the individuals who ran the analysis on behalf  
25 of the consulting firms. And through looking at that analysis

E791bnpp

1 and then through the government's own judgment, in view of the  
2 facts, in terms of when the bank's conduct became willful, we  
3 were able to approximate the dollar values that your Honor just  
4 recounted, which is that, as laid out in the statement of  
5 facts, for the Sudanese transactions, the government believes  
6 that, based on the factual record, that the bank's conduct  
7 became willful in or about July of 2006, and based on the  
8 transaction analysis performed under the auspices of outside  
9 counsel for the bank and by the consultants, we believe that  
10 the dollar value until those transactions ended amounted to  
11 approximately \$6.4 billion. And similarly for the Iranian  
12 transactions and the Cuban transactions, the dollar value that  
13 your Honor has recounted is based on the time period of those  
14 transactions where the government believes and the defendant  
15 has admitted that the conduct was willful. There were  
16 additional transactions --

17 THE COURT: Can I interrupt. How did you know you had  
18 all the relevant transactions?

19 MR. GOLDSTEIN: Obviously the government was relying  
20 on the cooperation of the bank, but in doing its due diligence,  
21 we had extensive interviews with the individuals who performed  
22 the analysis, and we have confidence that the numbers are  
23 accurate.

24 THE COURT: Okay. So it was based in part on  
25 cooperation from the bank, and the bank cooperated from an

E791bnpp

1 early date in providing information?

2 MR. GOLDSTEIN: That's correct, your Honor.

3 THE COURT: Okay. Thank you.

4 Ms. Seymour, is there anything that you'd like to add?

5 MS. SEYMOUR: No, your Honor.

6 THE COURT: Okay. So the total forfeiture amount, as  
7 we've been discussing it, is about 8.8 billion, and under the  
8 plea agreement that is payable to four entities. About half,  
9 as I read it, was payable to two state entities and half to two  
10 federal entities, one being the Federal Reserve and the other  
11 being the amount of the forfeiture in this action. So perhaps  
12 this is just a technical question, but in the information, the  
13 forfeiture allegation says that the defendant will forfeit the  
14 amount "to the United States," and I'm curious why the Federal  
15 Reserve is a separate entity from the United States.

16 MR. GOLDSTEIN: We don't believe the Federal Reserve  
17 is a separate entity from the United States, your Honor. The  
18 way that the preliminary order of forfeiture and the plea  
19 agreement is written is that the bank is agreeing to a money  
20 judgment in the amount of the total forfeiture amount but the  
21 government, in the course of negotiating this plea and in the  
22 interests of achieving a global resolution with all of the  
23 investigating entities and the regulators, has agreed to credit  
24 the payments that are made to the Federal Reserve and to the  
25 New York State Department of Financial Services, in connection

E791bnpp

1 with the state court plea, and that's how we end up having the  
2 one larger number with the credited amounts falling underneath  
3 that.

4 THE COURT: And why is there a separate amount to the  
5 Federal Reserve? Maybe that's a different way of putting my  
6 question.

7 MR. GOLDSTEIN: Under the cease and desist order with  
8 the Federal Reserve, as we read it, that amount is required as  
9 a separate penalty that needs to be paid. It's paid to the  
10 United States but it's paid separately in connection with that  
11 cease and desist order.

12 THE COURT: Okay. And so the amount that's actually  
13 payable to the United States in connection with the forfeiture  
14 related to this plea agreement is how much?

15 MR. GOLDSTEIN: So --

16 THE COURT: Ballpark.

17 MR. GOLDSTEIN: It's the \$8.8 billion minus the  
18 approximately \$4½ billion that will go to the state, minus the  
19 \$508 million that is geared for the Federal Reserve payment,  
20 which leaves, ballpark, about \$3.8 billion remaining payments  
21 that would be directly paid under this money judgment to the  
22 United States.

23 THE COURT: And where will the \$3.8 billion payable to  
24 the United States go?

25 MR. GOLDSTEIN: In the first instance, as set forth in

E791bnpp

1 the preliminary order of forfeiture, it will go into a Treasury  
2 suspense account that is an account that will be maintained  
3 pending the final resolution of this matter. Then it's my  
4 understanding that it will then go into the Treasury's  
5 forfeiture account, which will then be used in accordance with  
6 the rules and regulations that govern that account.

7 THE COURT: And I don't expect you to recite the rules  
8 and regulations, but what happens to the money in that account?  
9 Sorry to put you on the spot.

10 MR. GOLDSTEIN: There's a process by which victims of  
11 crimes can make petitions for remission, to be able to be  
12 compensated. My understanding is that if the money is not  
13 needed to compensate victims, at some point the money ends up  
14 essentially being used as general US Treasury funds or can be  
15 used by the Congress and the government as general funds.

16 THE COURT: Okay. Thank you.

17 The statement of facts says that delays by the bank in  
18 providing the government with information until May 2013  
19 "significantly impacted the government's ability to bring  
20 charges against responsible individuals, Sudanese sanctioned  
21 entities, and the satellite banks." So it appears that many  
22 other entities and persons were involved in the transactions.  
23 Considering all of these actors together, what is the bank's  
24 relative culpability in this conspiracy?

25 MR. GOLDSTEIN: We believe the bank is principally

E791bnpp

1 culpable, your Honor, and as I alluded to earlier in discussing  
2 the proffer of proof, it was BNP Paribas that was at the center  
3 of this conspiracy, and that enabled the sanctioned entities  
4 access to the US dollar system that those entities would not  
5 otherwise have had. The government of Sudan and entities tied  
6 to the government of Sudan are co-conspirators, but without BNP  
7 acting effectively as its US central banker, it would not have  
8 had access to the US dollar markets and to be able to do  
9 transactions in US dollars, and so the other entities, the  
10 satellite banks that are referenced, were essentially used by  
11 BNP Paribas to create a structure that enabled the transactions  
12 to go undetected, but their role is significantly less than BNP  
13 Paribas, which is the one that was actually structuring the  
14 transactions in the first place.

15 THE COURT: So there are obviously entities whose  
16 intent and whose actions are being ascribed to the bank. Is  
17 the investigation still ongoing with respect to other persons  
18 and entities or is this the only prosecution that you expect?

19 MR. GOLDSTEIN: The investigation is ongoing, your  
20 Honor.

21 THE COURT: Okay. The fine of 140 million is  
22 represented to be two times the profits of the bank from the  
23 illegal activity. How do you know what percentage of the  
24 monies in the transactions that were studied represent profits  
25 to the bank?

E791bnpp

1           MR. GOLDSTEIN: That, your Honor, is a representation  
2 from the bank that we believe should be credited. The number  
3 represents profit in a very narrow sense, which is the  
4 transaction fees that the bank charged in the course of  
5 engaging in all of the illicit conduct, and not just for the  
6 transactions that were willful but all of the transactions  
7 during the time period violating US sanctions. The bank has  
8 estimated that, and in conversations with the bank's counsel,  
9 we have no reason to doubt that \$70 million is an accurate  
10 number. Certainly the benefit to the bank in a broader sense  
11 in terms of relationships with customers and other broader  
12 financial benefits to engaging in these transactions are not  
13 included in that number, but in light of the obviously very  
14 sizeable forfeiture amount, we believe that a fine that is  
15 twice the actual transaction fee profit to the bank is an  
16 appropriate measure for a fine.

17           THE COURT: Okay. Thank you.

18           So on the basis of the documents submitted to the  
19 court and the answers to my questions today, I'm satisfied that  
20 the plea agreement is appropriate and reasonable in light of  
21 the charged conduct in this case.

22           First, the charge to which the defendant pleads  
23 guilty, one count of conspiracy to commit an offense against  
24 the United States for conspiring to violate the International  
25 Emergency Economic Powers Act and the Trading with the Enemy

E791bnpp

1 Act, is proper given the defendant's conduct. The conduct  
2 consisted of the covert processing and transfer of billions of  
3 dollars to and from entities in Sudan, Iran, and Cuba, in  
4 direct contravention of the US sanctions regime. Defendants'  
5 actions not only flouted US foreign policy but also provided  
6 support to governments that threaten both our regional and  
7 national security and, in the case of Sudan, a government that  
8 has committed flagrant human rights abuses and has known links  
9 to terrorism. I find that the severity of the defendant's  
10 conduct more than warrants the criminal charge to which had it  
11 has pleaded.

12 Second, the forfeiture amount appropriately penalizes  
13 the conduct I've just described. While that sum is admittedly  
14 large, at over 8 billion US dollars, it corresponds to the full  
15 amount of the criminal proceeds traceable to the conspiracy,  
16 and as I understand from the submissions to the court and what  
17 I've heard today, this bears a direct relation to the conduct  
18 at issue. In addition, the forfeiture amount will surely have  
19 a deterrent effect on others that may be tempted to engage in  
20 similar conduct, all of whom should be aware that no financial  
21 institution is immune from the rule of law.

22 Third, for substantially the same reasons that I find  
23 the forfeiture amount to be appropriate, I consider the fine of  
24 140 million US dollars to be fair. It represents double the  
25 amount of profit generated by the bank's unlawful actions. I

E791bnpp

1 also find that the fine is consistent with the public policies  
2 expressed in the US criminal laws and the Sentencing  
3 Guidelines.

4 Finally, I consider that the terms of the five-year  
5 probation are fair, particularly because they require the  
6 defendant to enhance its compliance policies and rules, which  
7 should help to ensure that any future unlawful conduct is  
8 prevented.

9 Accordingly, pursuant to Federal Rules of Criminal  
10 Procedure and in particular Rule 11(c)(1)(C), I approve the  
11 plea agreement.

12 And I would now like to ask a question about the  
13 proposed form of order you've submitted. I have a preliminary  
14 order of forfeiture from you. Typically I would just sign an  
15 order of forfeiture at the sentencing. I understand that  
16 certain consequences flow from my signing a preliminary order  
17 of forfeiture, but I'd like to hear why I should sign such a  
18 document now and not just wait until the sentencing.

19 MR. GOLDSTEIN: Your Honor, the order of forfeiture  
20 does make clear that if the court had not accepted the plea  
21 agreement that it would not be effective, but pursuant to the  
22 order of forfeiture, the bank would be required to pay the full  
23 remaining amount of the forfeiture under the money judgment  
24 within 30 days of the execution of the plea agreement, which  
25 was 30 days as of June 30<sup>th</sup>, and so by so ordering the

E791bnpp

1 forfeiture order now, that would put that into effect. It  
2 would make it so that the government would then essentially  
3 become the custodian of the forfeiture amount pending  
4 sentencing of the court. The government agreed in the plea  
5 agreement, because of the potential unwarranted collateral  
6 consequences to the bank's US financial managers that were  
7 entirely unrelated to the conspiracy that's at issue here, to  
8 adjourn sentencing for a period of time. As a result of that  
9 adjournment, which may be, you know, three, four, five, six  
10 months, we believe that it's in the government's interest and  
11 the public interest that the amount be forfeited and that that  
12 be done now or within 30 days so that all that needs to happen  
13 at sentencing is for judgment to ensue.

14 THE COURT: Okay. Thank you. In light of those  
15 representations, I will sign the preliminary order of  
16 forfeiture, and I will docket it once we have a docket number,  
17 which will be as soon as the information is filed.

18 Do the parties have a proposed date for sentencing? I  
19 know it's somewhat up in the air, given these other  
20 contingencies.

21 MR. GOLDSTEIN: I believe, in consultation with the  
22 court's deputy, we ask that the court set a control date for  
23 sentencing for October 3<sup>rd</sup> at 2 p.m., and if the Department  
24 of Labor resolution has happened prior to that point, we would  
25 expect to go forward and we would inform the court in advance,

E791bnpp

1 and if there's a reason to further adjourn it, we would also  
2 inform the court in advance at that point.

3 THE COURT: Okay. So I will schedule the sentencing  
4 for October 3<sup>rd</sup> at 2 p.m., but I'll await some communication  
5 from you as to whether we're really going forward on that date.

6 Mr. Dirani, the bank and your lawyer will have the  
7 right to speak at the sentencing on October 3<sup>rd</sup>.

8 Is there anything else we need to take care of today?

9 MS. SEYMOUR: No, your Honor.

10 MR. GOLDSTEIN: No, your Honor. Thank you very much.

11 THE COURT: Okay. Thank you. We're adjourned.

12 THE DEPUTY CLERK: All rise.

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